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No. 02-167

Supreme Court U.S.
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In The

Supreme Court of the United States

LYN-LEA TRAVEL CORP. d/b/a FIRST CLASS INTERNATIONAL TRAVEL MANAGEMENT,

Petitioner,

v.

AMERICAN AIRLINES, INC. and SABRE GROUP, INC.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REASONS FOR REPLY

Lyn-Lea Travel Corp. d/b/a First Class International Travel Management ("Lyn-Lea Travel") replies to two aspects of the Brief filed by respondents American Airlines, Inc. and Sabre Group, Inc. (jointly "Sabre"), which are directed at convincing the Court that, even if it does agree with Lyn-Lea Travel that Airline Deregulation Act pre-emption should be revisited and clarified, this particular case is not the proper vehicle for that review.

First, Sabre creates a revisionist history of the record in this case, to support its theory that the Court should not use this particular set of facts to revisit pre-emption. Lyn-Lea Travel wishes to correct the record.

Second, Sabre creates a legal construct of pre-emption jurisprudence that is both artificial and incorrect, in another effort to persuade the Court that this case does not involve a conflict of circuits. Lyn-Lea Travel will briefly explain why this construct fails.

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REPLY BRIEF

Lyn-Lea Travel Corp. d/b/a First Class International Travel Management ("Lyn-Lea Travel") replies to the Brief in Opposition ("Sabre Brief") filed by respondents American Airlines, Inc. and Sabre Group, Inc. (jointly "Sabre").

Sabre says that this case "plainly does not present a borderline question," quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 390 (1992). Sabre Brief at 8.

Lyn-Lea Travel agrees. The extent and nature of pre-emption in this case goes beyond anything in the jurisprudence of the Court and earlier cases of the lower courts.

In this case, the Court therefore has the opportunity to clarify the reach of pre-emption under the Airline Deregulation Act, 49 U.S.C. § 41713(b) ("ADA"). At least one commentator has urged that the Court revisit this issue. Daniel H. Rosenthal, Note, *Legal Turbulence: The Court's Misconstrual of the Airline Deregulation Act's Pre-emption Clause and the Effect on Passengers' Rights*, 51 DUKE L.J. 1857 (2002).

This is a good case to use for clarification because it well illustrates how pre-emption can frustrate the purpose of the ADA – "to promote 'maximum reliance on competitive market forces.'" *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 230 (1995). In this case, Lyn-Lea Travel alleges that Sabre – essentially a very large travel agency – competed against the far-smaller Lyn-Lea Travel in a variety of wrongful ways.

Competition is not enhanced when market forces are out of balance. Here, the results of the rulings below are that Sabre can sue Lyn-Lea Travel for what it claims are problems with its commercial relationship with Lyn-Lea

Travel, but Lyn-Lea Travel cannot respond with its own claims arising out of that same relationship.

Sabre does not really urge pre-emption. Sabre wants complete immunity.

ARGUMENT

1.

Sabre miscasts the record.

The record below is bereft of any actual evidence that allowing Lyn-Lea Travel its state-law based claims would have the "forbidden significant effect" on the price, routes, or services of an air carrier that the Court condemned in *Morales*, 504 U.S. at 391. This problem is particularly acute with respect to Sabre, which is now independent of American Airlines. App. 4, fn. 2.

The ADA does not support the broad pre-emption applied by the lower courts in this case, because any effect is too insignificant.

Sabre insists that this position is "contrary to the record." Sabre Brief at 8. However, Sabre does not provide a single record citation to support this allegation, nor does Sabre otherwise provide record support for other allegations it makes, many of which are in truth refuted by the record.

For example, Sabre advises the Court that "the district court granted summary judgment on the merits that neither American nor Lyn-Lea breached the CRS [Computer Reservation System] Agreement." Sabre Brief at 8. This is simply wrong.

There is nothing in the record to support the statement that the district court held that Lyn-Lea Travel did

not breach the CRS Agreement. In fact, the district court expressly denied Sabre's motion for summary judgment on its counterclaim for breach against Lyn-Lea Travel. App. 54.

Sabre tells the Court that Lyn-Lea Travel agreed to add the Sabre CRS to its existing CRS (owned by a competitor to Sabre) "in an effort to reduce Lyn-Lea's overall commitment to use SABRE." Sabre Brief at 1. This is also untrue, because at that time Lyn-Lea Travel had no commitment to use Sabre. App. 31.

Sabre says that "it is irrelevant to Lyn-Lea's claims that Sabre as a CRS provider allows for booking non-airline matters such as rental cars and hotels." Sabre Brief at 8-9. This also miscasts the record. Lyn-Lea Travel has consistently argued that the scope of the ADA pre-emptive effect must be considered against the fact that the Sabre CRS has no effect at all on air travel operations, when it is used to book other travel operations such as hotel rooms or rental cars. *See* App. 3, fn. 1.

Sabre refers (again without a record cite) to a class action by "Lyn-Lea and other travel agents," apparently in an effort to paint Lyn-Lea Travel as an inconsistent and frequent litigant. Sabre Brief at 7, fn. 2. Presumably, Sabre refers to a suit brought against American Airlines and other airlines for price fixing. Lyn-Lea Travel was not a named party to that lawsuit and did not actively participate in it. As a member of the class, Lyn-Lea Travel did benefit somewhat from the settlement in that case. However, Lyn-Lea Travel never took the position attributed to it by Sabre.

Any detailed discourse on the record must await full briefing, if the Court grants Lyn-Lea Travel's Petition. The

point Lyn-Lea Travel seeks to make here is that the Court cannot take unsupported factual assertions by Sabre as the truth.

2.

Sabre confuses the issues.

Sabre spends nearly one-third of its Brief arguing that the "core of the ADA pre-emption clause is to prevent the States from indirectly regulating airline competition." Sabre Brief at 5-8. That is quite true, but it is irrelevant in this case.

This case is not about a State effort to regulate airline competition. Instead, this case involves the simpler issue whether "a company's wrongful actions in commercial conduct unrelated to air travel" are pre-empted by the ADA. Petition at 1.

Sabre essentially concedes that there is a conflict of circuits regarding the scope of ADA pre-emption. Sabre Brief at 10. In an attempt to avoid this conflict, Sabre claims that the Court can draw a clear line between "economic" actions – which Sabre says are pre-empted – and "non-economic" actions – which Sabre says is where the conflict of circuits lies.

This is not a distinction at all, and one need go no further than *Wolens* to see why. The Court held that the ADA did not pre-empt enforcement of state contract law. *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 228 (1995). However, state contract law is intrinsically "economic" in nature.

The ADA does not speak of "economics." It uses more narrow words, pre-empting state laws that are "related to a price, route, or service of an air carrier that may provide air transportation." 49 U.S.C. § 41713(b). In this case, prices and routes are not at issue, so the sole issue is the meaning of "service of an air carrier that may provide air transportation."

The conflict of circuits is indisputably related to the scope of "service" that may be pre-empted, as discussed in *Northwest Airlines, Inc. v. Duncan*, 531 U.S. 1058 (2000). Nonetheless, Sabre tries to explain the conflict by characterizing some of the conflicting cases as non-economic in nature. Sabre Brief at 11, citing *Taj Mahal Travel v. Delta Airlines, Inc.*, 164 F.3d 186 (3d Cir. 1998); *Smith v. Comair*, 134 F.3d 254 (4th Cir. 1998); and *Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423 (7th Cir. 1996).

Sabre's effort fails because all three cases involve the most fundamental economic aspect of the airline business – charging money to fly a passenger between two points. *Taj Mahal Travel* involved the sale of airline tickets. 164 F.3d at 187. *Comair* involved a passenger who was denied boarding. 134 F.3d at 256. *Travel All Over the World* also involved the sale of airline tickets. 73 F.3d at 1428.

All issues involving the ADA will be economic in nature, because the ADA was an economic act. However, the question in all these cases is whether a specific "service" is pre-empted. An airline's actions directly relating to air travel services are not pre-empted, according to these cases. However, according to the courts below, Lyn-Lea Travel's claims against Sabre relating to the Sabre CRS are pre-empted.

Thus, Sabre's economic/non-economic dichotomy fails to explain away the conflict of circuits.

Moving from economics to marketing, Sabre also asserts (again without record support) that Lyn-Lea Travel "seeks to impose state law limits on airlines' marketing practices." Sabre Brief at 7. At the outset, this is demonstrably false, because nothing in this case suggests any effort to regulate American Airlines' marketing practices with respect to air travel.

Lyn-Lea Travel does not seek to regulate the marketing practices of Sabre, but rather to address Sabre's deliberate and intentional actions directed at Lyn-Lea Travel, not at the marketplace.

Even if marketing practices were at issue, the dispute in *Wolens* related to a true marketing practice – American Airlines' efforts to revise its frequent flier program. *Wolens*, 513 U.S. at 224-225. The Court allowed a contract-based claim about those marketing practices to continue, which it could not have done had all marketing practices claims been pre-empted.

Sabre goes further off course when it argues that Lyn-Lea Travel "seeks to impose a supposed state law duty" on Sabre. Sabre Brief at 4. The duty to which Sabre refers is the duty to disclose terms known to Sabre at the time Lyn-Lea Travel and Sabre were negotiating the Sabre CRS Agreement. Sabre Brief at 9. This is the basis for Lyn-Lea Travel's affirmative claim for fraudulent inducement. As the Court of Appeals noted, fraudulent inducement "is related to the fundamental issue in contract actions: is there an enforceable agreement?" App. 14. Thus, the claim merely relates to contract formation. Lyn-Lea Travel does not, as Sabre represents to the Court, seek "to impose

state law duties on airlines to disclose their plans for how, and on what terms, to market air travel through travel agents." Sabre Brief at 7.

None of Sabre's various side trips address the fact that there is a conflict of circuits on the nature and extent of ADA pre-emption relating to "service of an air carrier that may provide air transportation," or the fact that Lyn-Lea Travel is the victim of that confusion.

CONCLUSION

For the reasons set forth herein and in the Petition, writ of certiorari should issue.

Respectfully submitted,

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